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Senate Bill 241, An Act Concerning the Department of Administrative Services and Prequalification and Evaluation of Contractors
Labor and Public Employees Committee
March 2, 2010

AGC of Connecticut Position: Oppose

The Connecticut Construction Industries Association, Inc. is the most diverse commercial construction industry trade association in Connecticut. Formed over 40 years ago, CCIA is an organization of associations, where all sectors of the commercial construction industry work together to advance and promote their shared interests. CCIA members have a long history of providing quality work for the public benefit.

CCIA is comprised of nine divisions, including the Associated General Contractors of Connecticut, Inc.; The Connecticut Road Builders Association, Inc.; Utility Contractors Association of Connecticut, Inc.; The Connecticut Ready Mixed Concrete Association, Inc.; and Connecticut Asphalt and Aggregate Producers Association. CCIA has more than 350 members statewide, including contractors, subcontractors, suppliers, and professional organizations that service the construction industry.

Associated General Contractors of Connecticut, a division of CCIA, represents commercial, industrial, and institutional construction contractors, subcontractors, material suppliers and professionals serving the construction industry. AGC of Connecticut is the Connecticut chapter of the Associated General Contractors of America, a national contractors trade association.

Senate Bill 241, An Act Concerning the Department of Administrative Services and Prequalification and Evaluation of Contractors, would authorize the DAS Commissioner to deny a prequalification certificate to any contractor or substantial subcontractor who, within the past three years, has received four or more unsatisfactory written evaluations. The Commissioner is presently authorized to not issue or renew a prequalification certificate to disqualified contractors that have a principal or key personnel who has been convicted within five years of acts that could have resulted in disqualification. Additionally, the bill extends liability protections to any person who completes a subcontractor evaluation.

AGC of Connecticut is **opposed** to Senate Bill 241 because it does not provide contractors with sufficient due process such as an administrative hearing or an opportunity to challenge the fairness or accuracy of an unsatisfactory evaluation. Without such a hearing, a general contractor or subcontractor who has, for example, performed work successfully on numerous public school building projects and has received favorable evaluations may be denied a prequalification certificate because he receives four unsatisfactory evaluations in a three-year period. The consequences of this are



staggering for a contractor as it would effectively make him ineligible for public contracting work. The contractor could be debarred based on denial of a prequalification certificate. A project owner could, for any reason, submit an inaccurate evaluation of a general contractor. Damage occurs to the contractor the moment a negative evaluation is filed. While the contractor may be able to respond by submitting a letter setting forth his version of the facts, the document is merely filed with the agency. Authorizing denial of prequalification for four or more unsatisfactory evaluations, without determining whether they are legitimate or affording the contractor the ability to challenge them at the administrative level is inherently unfair. DAS would weigh the evaluations in making a determination as to whether to deny the prequalification certificate. A contractor should be afforded due process at the administrative level to challenge such an evaluation. A contractor has an opportunity for an administrative hearing when his prequalification status is going to be revoked by the agency, yet he has no such opportunity in the case of unsatisfactory evaluations, and that is where the decision to debar is made.

The bill was drafted in response to the selection last fall by the state Department of Transportation of a contractor to perform bridge construction in Connecticut following poor evaluations it received on several public school building projects in Massachusetts. That case presents a situation that is more complex and not easily resolved by legislation. Additionally, the bill would not apply to DOT; it would apply to projects awarded by the Department of Public Works and the University of Connecticut.

We understand DAS seeks to gather more information through evaluations from private owners. In addition to administrative changes to the contractor prequalification program, the agency would be able to better assess the performance of contractors. AGC of Connecticut supports those efforts but we believe that Senate Bill 241 goes too far and does not provide sufficient due process for contractors. Therefore, we respectfully request that the committee not act on the bill.

Please contact John Butts, Executive Director of AGC of Connecticut, or Matthew Hallisey, Director of Government Relations and Legislative Counsel for CCIA, at 860-529-6855, if you have any questions or if you need additional information.